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KENNETH L. SCHROEDER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KENNETH L. SCHROEDER,

Defendant.

No. C 07 3798 JW

ANSWER TO COMPLAINT

DEMAND FOR TRIAL BY JURY

1 Kenneth Schroeder hereby answers the Complaint of plaintiff Securities And Exchange
2 Commission ("Plaintiff" or "SEC") as follows. Paragraph numbers in this Answer correspond to
3 the paragraph numbers of the Complaint and respond to the allegations of that paragraph, up to
4 the Affirmative Defenses section. To the extent that the headings in the Complaint outside of the
5 numbered allegations are intended to be allegations as opposed to mere argument, Schroeder
6 denies them.

7 1. Schroeder admits that from July 1, 1999 through December 31, 2005, he was the
8 Chief Executive Officer of KLA-Tencor Corporation ("KLA-Tencor"), which was headquartered
9 in San Jose, California. Schroeder denies the remaining allegations of paragraph 1.

10 2. Schroeder is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations in the first sentence pf paragraph 2, and on that basis denies those
12 allegations. Schroeder denies the remaining allegations of paragraph 2.

13 3. Schroeder denies the allegations of paragraph 3.

14 4. Schroeder denies the allegations of paragraph 4.

15 5. Schroeder admits that the SEC brings this action under the statutes cited in
16 paragraph 5. Schroeder denies the remaining allegations of paragraph 5.

17 6. Schroeder admits that this Court has jurisdiction over this action under the statutes
18 cited in paragraph 6. Schroeder denies the remaining allegations of paragraph 6.

19 7. Schroeder admits that venue is proper in the Northern District of California, based
20 on his residence in this District. Schroeder denies the remaining allegations of paragraph 7.

21 8. Schroeder denies the allegations of paragraph 8.

22 9. Schroeder admits that he is age 61 and resides in Los Altos Hills, California.
23 Schroder admits that he served as KLA-Tencor's President and Chief Operating Officer after
24 KLA Instruments' merger with Tencor Instruments, which closed on April 30, 1997; and that
25 from July 1, 1999 until January 1, 2006, he served as KLA-Tencor's Chief Executive Officer.
26 Schroeder admits that he served on KLA-Tencor's Board of Directors from 1997 through 2005.

1 Schroeder admits that during certain periods from 1997 through 2005, he served on a stock option
2 committee. Schroeder denies the remaining allegations of paragraph 9.

3 10. Schroeder admits the allegations of paragraph 10.

4 11. Schroeder admits that KLA-Tencor used employee stock options as a form of
5 compensation to recruit, retain, and incentivize key employees; and that each option gave the
6 grantee the right to buy KLA-Tencor common stock from the Company at a set price, called the
7 "exercise" or "strike" price, on a future date after the option vested. Schroeder denies the
8 remaining allegations of paragraph 11.

9 12. Schroeder is without knowledge or information sufficient to form a belief as to
10 the truth of the allegations in paragraph 12, and on that basis denies those allegations.

11 13. Schroeder denies the allegations of paragraph 13.

12 14. Schroeder admits that KLA-Tencor made the statements that appear in its public
13 filings with the SEC. Schroeder is without knowledge or information sufficient to form a belief
14 as to the truth of the remaining allegations in paragraph 14, and on that basis denies those
15 allegations.

16 15. Schroeder admits that KLA-Tencor made the statements that appear in its public
17 filings with the SEC. Schroeder denies the remaining allegations of paragraph 15.

18 16. Schroeder admits that he signed certifications prescribed by the Sarbanes-Oxley
19 Act which were attached as exhibits to KLA-Tencor's Forms 10-K for fiscal years 2002, 2003,
20 2004 and 2005. Schroeder denies the remaining allegations of paragraph 16.

21 17. Schroeder admits that KLA-Tencor made the statements that appear in its proxy
22 statement for fiscal year 2002, as filed with the SEC.

23 18. Schroeder denies the allegations of paragraph 18.

24 19. Schroeder admits that in 1997, KLA's Board of Directors stated that it authorized
25 Kenneth Levy, Jon Tompkins, and Kenneth Schroeder to grant certain stock options to non-
26 officer employees, and that execution of grants was to be by at least two of those persons.
27 Schroeder is without knowledge or information sufficient to form a belief as to the truth of the
28

1 remaining allegations in paragraph 14, and on that basis denies those allegations.

2 20. Schroeder denies the allegations of paragraph 20.

3 21. Schroeder is without knowledge or information sufficient to form a belief as to the
4 allegations of paragraph 21 inasmuch as they refer to unspecified “ KLA executives.” Schroeder
5 denies the allegations of paragraph 21 to the extent they are intended to refer to him.

6 22. Schroeder is without knowledge or information sufficient to form a belief as to
7 the truth of the allegations in paragraph 22, and on that basis denies those allegations.

8 23. Schroeder admits that in or about June 1999, a KLA executive, Lisa Berry,
9 instructed the Company’s Human Resources (“HR”) department on how to backdate new hire
10 grants. Schroeder is without knowledge or information sufficient to form a belief as to the truth of
11 the allegations of paragraph 23 as to the specifics of Ms. Berry’s instruction except as admitted
12 and therefore denies those allegations.

13 24. Schroeder is without knowledge or information sufficient to form a belief as to the
14 truth of the allegations regarding the practices of unspecified alleged members of a “Stock
15 Option Committee” other than Schroeder, and as to any HR department employees, and on that
16 basis denies those allegations. Schroeder denies the allegations of paragraph 24 to the extent
17 those allegations are directed at him.

18 25. Schroeder denies the allegations of paragraph 25.

19 26. Schroeder denies the allegations of paragraph 26.

20 27. Schroeder is without knowledge or information sufficient to form a belief as
21 to the truth of the allegation that the annual employee review process was completed by the
22 end of August or beginning of September, and on that basis denies those allegations.
23 Schroeder denies the remaining allegations of paragraph 27.

24 28. Schroeder is without knowledge or information sufficient to form a belief as
25 to the truth of the allegations in paragraph 28, and on that basis denies those allegations.

26 29. Schroeder denies the allegations of paragraph 29.

27 30. Schroeder denies the allegations of paragraph 30.

28 31. Schroeder admits that on or around March 19, 2001, the General Counsel of KLA-

1 Tencor sent Schroeder and others a memorandum. Schroeder has been denied a copy of the
2 memorandum and therefore is without knowledge or information sufficient to form a belief as to
3 the truth of the allegations which purport to select and partially quote the memorandum out of
4 context as well as the characterizations of the memorandum and therefore denies all such
5 allegations in paragraph 31.

6 32. Schroeder admits that on or around March 19, 2001, the General Counsel of KLA-
7 Tencor sent Schroeder and others a memorandum. Schroeder has been denied a copy of the
8 memorandum and therefore is without knowledge or information sufficient to form a belief as to
9 the truth of the allegations which purport to select and partially quote the memorandum out of
10 context as well as the characterizations of the memorandum and therefore denies all such
11 allegations in paragraph 32.

12 33. Schroeder admits that by e-mail dated March 22, 2001 sent to the General
13 Counsel, he made the statements therein. The allegations of paragraph 33 distort the e-mail by
14 taking phrases out of context and omitting statements that are necessary to make the partial
15 statements that the SEC purports to quote, not misleading. Therefore, except as admitted,
16 Schroeder denies the allegations of paragraph 33.

17 34. Schroeder denies the allegations of paragraph 34.

18 35. Schroeder is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations in paragraph 35, and on that basis denies them.

20 36. Schroeder denies the allegations of paragraph 36.

21 37. Schroeder denies the allegations of paragraph 37.

22 38. Schroeder admits that he reviewed the KLA-Tencor's financial statements
23 included in any SEC filing he signed, before the filing was filed with the SEC. Schroeder is
24 without knowledge or information sufficient to form a belief as to the truth of the remaining
25 allegations in paragraph 38, and on that basis denies them.

26 39. Schroeder admits that he signed certifications prescribed by the Sarbanes-Oxley
27 Act which were attached as exhibits to KLA-Tencor's Forms 10-Q for the quarterly periods
28 ending September 30, 2002 through March 31, 2005, and whose contents are set forth therein.

1 Schroeder is without knowledge or information sufficient to form a belief as to the truth of the
2 remaining allegations in paragraph 39, and on that basis denies them.

3 40. Schroeder is without knowledge or information sufficient to form a belief as to the
4 truth of the allegations in paragraph 40, and on that basis denies them.

5 41. Schroeder admits that KLA-Tencor made the statement that appear in its proxy
6 statement for fiscal year 2002, as filed with the SEC. Schroeder denies the remaining allegations
7 of paragraph 41.

8 42. Schroeder denies the allegations of paragraph 42.

9 43. Schroeder denies the allegations of paragraph 43.

10 44. Schroeder denies the allegations of paragraph 44.

11 45. Schroeder admits that KLA-Tencor made public statements reflected in public
12 documents. Schroeder is without knowledge or information sufficient to form a belief as to the
13 truth of the remaining allegations in paragraph 45, and on that basis denies them.

14 46. Schroeder denies the allegations of paragraph 46.

15 47. Schroeder denies the allegations of paragraph 47.

16 **FIRST CLAIM OF RELIEF**

17 48. Schroeder incorporates by reference his responses to paragraphs 1 through 47,
18 above.

19 49. Schroeder denies the allegations of paragraph 49.

20 50. Schroeder denies the allegations of paragraph 50.

21 **SECOND CLAIM FOR RELIEF**

22 51. Schroeder incorporates by reference his responses to paragraphs 1 through 47,
23 above.

24 52. Schroeder denies the allegations of paragraph 52.

25 53. Schroeder denies the allegations of paragraph 53.

26 54. Schroeder denies the allegations of paragraph 54.

27 **THIRD CLAIM FOR RELIEF**

1 55. Schroeder incorporates by reference his responses to paragraphs 1 through 47,
2 above.

3 56. Schroeder denies the allegations of paragraph 56.

4 57. Schroeder denies the allegations of paragraph 57.

5 **FOURTH CLAIM FOR RELIEF**

6 58. Schroeder incorporates by reference his responses to paragraphs 1 through 47,
7 above.

8 59. Schroeder denies the allegations of paragraph 59.

9 60. Schroeder denies the allegations of paragraph 60.

10 **FIFTH CLAIM FOR RELIEF**

11 61. Schroeder incorporates by reference his responses to paragraphs 1 through 47,
12 above.

13 62. Schroeder denies the allegations of paragraph 62.

14 63. Schroeder denies the allegations of paragraph 63.

15 **SIXTH CLAIM FOR RELIEF**

16 64. Schroeder incorporates by reference his responses to paragraphs 1 through 47,
17 above.

18 65. Schroeder denies the allegations of paragraph 65.

19 66. Schroeder denies the allegations of paragraph 66.

20 67. Schroeder denies the allegations of paragraph 67.

21 **SEVENTH CLAIM FOR RELIEF**

22 68. Schroeder incorporates by reference his responses to paragraphs 1 through 47,
23 above.

24 69. Schroeder denies the allegations of paragraph 69.

25 70. Schroeder denies the allegations of paragraph 70.

26 71. Schroeder denies the allegations of paragraph 71.

EIGHTH CLAIM FOR RELIEF

72. Schroeder incorporates by reference his responses to paragraphs 1 through 47, above.

73. Schroeder denies the allegations of paragraph 73.

74. Schroeder denies the allegations of paragraph 74.

75. Schroeder denies the allegations of paragraph 75.

NINTH CLAIM FOR RELIEF

76. Schroeder incorporates by reference his responses to paragraphs 1 through 47, above.

77. Schroeder denies the allegations of paragraph 77.

78. Schroeder denies the allegations of paragraph 78.

TENTH CLAIM FOR RELIEF

79. Schroeder incorporates by reference his responses to paragraphs 1 through 47, above.

80. Schroeder denies the allegations of paragraph 80.

81. Schroeder denies the allegations of paragraph 81.

ELEVENTH CLAIM FOR RELIEF

82. Schroeder incorporates by reference his responses to paragraphs 1 through 47, above.

83. Schroeder denies the allegations of paragraph 83

84. Schroeder denies the allegations of paragraph 84.

85. Schroeder denies the allegations of paragraph 85.

TWELFTH CLAIM FOR RELIEF

86. Schroeder incorporates by reference his responses to paragraphs 1 through 47, above.

87. Schroeder denies the allegations of paragraph 87.

88. Schroeder denies the allegations of paragraph 88.

THIRTEENTH CLAIM FOR RELIEF

89. Schroeder incorporates by reference his responses to paragraphs 1 through 47, above.

90. Schroeder denies the allegations of paragraph 90.

91. Schroeder denies the allegations of paragraph 91.

AFFIRMATIVE DEFENSES

Schroeder sets forth below his affirmative defenses. Each defense is asserted as to all causes of action against Schroeder. By setting forth these affirmative defenses, Schroeder does not assume the burden of proving any fact, issue or element of a claim where such burden properly belongs to the SEC.

As separate affirmative defenses, Schroeder alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint, and each of its purported claims, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Statutes of Limitation)

The claims alleged in the Complaint are barred, in whole or in part, by the applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

(Laches)

The Complaint, and each claim in it, is barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Permitted Reliance of Director and Officer)

Plaintiff's claims are bared in whole or in part because Schroeder was permitted under applicable law to rely, and did reasonably rely, on information, opinions, reports and statements

1 prepared or presented by:

2 (1) officers or employees of the corporation whom he believed to be reliable and
3 competent in the matters presented;

4 (2) counsel, independent accountants or other persons as to matters which he
5 believed to be within such person's professional or expert competence;

6 (3) committees of the board upon which Schroeder did not serve, as to matters
7 within their designated authority, which committees Schroeder in good faith believed to merit
8 confidence.

9 **FIFTH AFFIRMATIVE DEFENSE**

10 **(Relief Barred by Eighth Amendment to the U.S. Constitution)**

11 The relief sought in the Complaint is barred, in whole or in part, by the Eighth
12 Amendment to the United States Constitution.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Relief Barred by Fourteenth Amendment to the U.S. Constitution)**

15 The relief sought in the Complaint is barred, in whole or in part, by the Fourteenth
16 Amendment to the United States Constitution.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Schroeder prays for relief and judgment as set forth below.

- 19 1. For judgment in his favor;
20 2. That Plaintiff takes nothing by means of its Complaint; and
21 3. For such other further relief as the Court deems just and proper.

22 DLA PIPER US LLP

23 Dated: September 10, 2007

24 By /s/ Shirli Weiss

25 SHIRLI WEISS
26 Attorneys for Defendant
27 KENNETH L. SCHROEDER
28

DEMAND FOR JURY TRIAL

Schroeder demands a trial by jury of all issues triable to a jury.

Respectfully submitted,

Dated: September 10, 2007

DLA PIPER US LLP

By /s/ Shirli Weiss

SHIRLI WEISS

Attorneys for Defendant

KENNETH SCHROEDER